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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|--------------------------|------------------------|
| 10/530,018 | 04/01/2005 | Gregory Giffin | 347168001US1 | 7813 |
| 25096 | 7590 | 07/21/2009 | | |
| PERKINS COIE LLP PATENT-SEA P.O. BOX 1247 SEATTLE, WA 98111-1247 | | | EXAMINER VU, VIET DUY | |
| | | | ART UNIT 2454 | PAPER NUMBER |
| | | | MAIL DATE 07/21/2009 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/530,018 | Applicant(s) GIFFIN ET AL. | |
| | Examiner Viet Vu | Art Unit 2454 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) 1-3 and 14-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-13 and 42-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-3 and 14-41 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/05</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. Applicant's election of invention I, including claims 4-13 and 42-50, is acknowledged. Applicant is requested to cancel non-elected claims in the next correspondence.

Art Rejections:

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 4-13 and 42-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer, U.S. pat. No. 6,208,626.

Per claims 4-7, 9-10 and 12-13, Brewer discloses a system for providing communication services between geographically

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dispersed source and destination terminals comprising at least one airborne and movable wireless communications device, wherein the wireless communications device is configured to store and forward large data files and includes:

- a) a wireless transceiver for communicating with the source and destination terminals over at least one high bandwidth channel (see col 9, lines 12-23, 41-57);
- b) at least one processor coupled among the wireless transceiver wherein the processor, via the wireless transceiver, is configured to control receipt of at least one large data file, from the source terminal and after the airborne wireless communications device travels near to the destination terminal, i.e., having a clear line of site, control transmit of the large data file to the destination terminal (see col 2, lines 38-50 and col 9, lines 6-9).

Brewer does not explicitly show a mass data storage at the wireless device for storing the large data files for a predetermined period of time. It would have been obvious to one of ordinary skill in the art at the time the invention was made To recognize the use of such mass storage in Brewer because it would have enabled the processor to perform store and forward function (see col 2, lines 38-50).

It is further noted that a large data file would have typically been greater 10 gigabytes (see col 7, lines 27-35).

Per claim 8, Brewer teaches providing a second communication channel for transmitting commands to the wireless device (see col 4, lines 34-48).

Per claim 11, Brewer does not explicitly teach determining if the processor storage is capable of holding data file for delivering to the destination. It would have been obvious to one skilled in the art to perform such determination in practicing Brewer's invention because it would have ensured performing store and forward operation properly.

Claims 42-50 are similar in scope as that of claims 4-13. The use of error correction coding and data encryption in data transmission is also well known in the art.

Conclusion:

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viet Vu whose telephone number is 571-272-3977. The examiner can normally be reached on Monday through Friday from 7:00am to 4:00pm. The Group general information number is 571-272-2100. The Group fax number is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn, can be reached on 571-272-1915.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Viet Vu/
Primary Examiner, Art Unit 2454
7/17/09